FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 524/2006
&
Second Appeal No. 540/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 16, 2007.

Since the facts in these two second appeals are identical, both of them are being disposed of by this common order.

The respondent no.1- Sk. Haroon is the original plaintiff. A suit was filed by the respondent no.1 against his brothers and sisters, and one Gajanan who is appellant in Second Appeal No. 540/2006, for partition and separate possession of the suit property. It was the case of the plaintiff that initially, the suit property was owned by one Sk. Abdullah Sk. Malan who died on 6/10/1987. It is then pleaded by the plaintiff that the plaintiff has $2/10^{th}$ i.e. $1/5^{th}$ share in the suit property.

The defendants Sk. Yusuf and Gajanan denied the claim of the plaintiff and pleaded that Sk. Abdullah Malan had, on 2/1/1987, executed a document of Hiba in favour of Sk. Yakub and Hiba-

bil-Ewaz in favour of Sk. Yusuf on 2/1/1987. It was further pleaded by these defendants that Sk Yakub sold the property to defendant Gajanan by a registered sale deed dated 23/11/1992. According to these two defendants, the two properties which were gifted to Sk. Yusuf and Sk. Yakub by Hiba and Hiba-bil-Ewaz, could not be partitioned as they had become the owners thereof in view of the documents executed on 2/1/1987.

The trial and the appellate Courts, on appreciation of the evidence on record, held that the plaintiff has proved that the suit fields were owned by his father. The Courts further held that the plaintiff has proved that he had 1/5th share in the suit property. The Courts then recorded a finding that defendant Gajanan had not proved that he had purchased the field S. No. 4/1 from Sk. Yakub. Similarly, the Courts held that Sk. Abdullah Malan was not in a sound state of mind and health at the time of execution of the documents on 2/1/1987 and both the documents were not legal and valid and did not pass title in the suit property in favour of either Sk. Yusuf or Sk. Yakub. The Courts considered the fact that neither the Hiba nor the Hiba-bil-Ewaz was produced by the contesting defendants before the trial Court. The Courts further recorded a finding that Gajanan had not proved that he has purchased the suit field from Sk.

Yakub as he had not produced the sale deed dated 23/11/1992 on record. The Courts further held that the Hiba-bil-Ewaz was not a valid gift as the witness examined on behalf of the defendants clearly admitted that his father had demanded an amount of Rs.1,000/- before the execution of Hiba-bil-Ewaz and under the Mohammedan Law, such a demand was not permissible and Hiba-bil-Ewaz was valid only if the consideration was voluntarily paid by the donee to the donor at the time of execution of the Hiba-bil-Ewaz.

The findings recorded by both the Courts are pure findings of facts based on the proper appreciation of the material evidence on record and do not give rise to any substantial question of law. Both the second appeals are, therefore, dismissed with no order as to costs.

JUDGE

RMP